

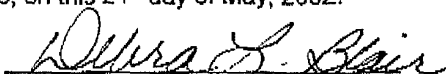
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CERTIFICATE OF FACSIMILE TRANSMISSION

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Debra L. Blair

Attorney Docket No. 1165

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bruce et al. Date: May 21, 2002
Serial No.: 09/766,399 Group Art Unit: 1634
Filed: January 19, 2001 Examiner: Einsmann, J
For: "Novel Plant Promoters and Methods of Use"

Assistant Commissioner for Patents
Washington, D.C. 20231

Response to Restriction Requirement

This is in response to the Restriction Requirement issued March 21, 2002, in which the Examiner has required restriction between Group I (Claims 1-16), Group II (Claim 17), and Group III (Claim 18). The Examiner further requests the election of a single plant promoter sequence as listed in Claim 1 for examination. Applicants hereby elect with traverse to prosecute the claims of Group I, and Claim 1(c) sequence, and expressly reserve the right to file divisional applications or take other such appropriate measures to protect the inventions in the remaining claims. No change of inventorship is required due to this election of Group I.

The Examiner states that a single plant promoter from those listed in claim 1 must be selected for examination with whichever claim set is elected. The Examiner states that each of these promoter sequences is patentably distinct because they are unrelated sequences, i.e. these sequences do not share a common structure.

Serial No. 09/766,399
Group Art Unit: 1634

Applicants traverse the election of a single sequence under Claim 1. Applicants respectfully remind the Examiner that the provisions of 37 CFR 1.141 *et seq.* have been partially waived by the Commissioner. MPEP 803.04 states: "Absent evidence to the contrary, each...nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 *et seq.* Nevertheless, to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application." The MPEP goes on to state: "It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction."

Therefore, Applicants respectfully request that all sequences of Claim 1 be examined in a single application, and not be subject to restriction.

Respectfully submitted,



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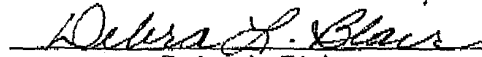
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GROUP 1600

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TO: Tech Center 1600
FROM: Debra L. Blair, Registration No. 39,112
RE: U. S. Patent Application No. 09/766,399; Attorney Docket No. 1165
Title: Novel Plant Promoters and Methods of Use
DATE: May 21, 2002 FAX NUMBER: (703) 872-9306
NUMBER OF PAGE(S) FOLLOWING THIS SHEET: 4

COMMENTS:

Attached -

- Extension of Time Petition (2 pgs.)/1 copy
- Response to Restriction Requirement (2 pgs.)/1 copy

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